IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2612 OF 2006

SHIVAJI NANA SHINDE .. PETITIONER

Versus

THE STATE OF MAHARASHTRA & ORS. RESPONDENTS

Mr. P.M. Pradhan i/b Niranjan Mundargi for petitioner

Mr. S. R. Borulkar, PP

Mr. Shirish Gupte with Mr. B.D. Joshi for applicant i/b Mr. P.D. Dalvi (Appln. No. 509/06)

CORAM:-SMT. RANJANA DESAI &
ANOOP V. MOHTA, JJ.

DATED:-6/2/2007

P.C.

. At the outset, we may note that as directed by us Shri Gulabrao Karanjule is present in the court today.

2. The petitioner is the complainant in C.R No.I-399/06 registered with Ambernath Police Station. The said C.R. is registered under Section 302 read with Section 34 of the Indian Penal Code and under Sections 3,25 and 27 of the Indian Arms Act.

3. In short the case of the petitioner appears to be that on 24/10/06 at about 3-35 p.m. his son was shot dead out side his shop at Ambernath. According to the petitioner, Gulabrao Karanjule was present at the scene of offence and in fact he is very much concerned with the murder of the petitioner's son. The petitioner saw the said Gulabrao Karanjule and one Rakesh Kumar running from the spot with revolver and gun respectively in their hands. The petitioner accordingly lodged the complaint naming Gulabrao Karanjule as an accused on 24/10/06. The grievance of the petitioner is that though the petitioner had specifically named Gulabrao Karanjule in the FIR investigating agency did not arrest him. It is alleged in the petition that the said Gulabrao Karanjule is an influential person being a Corporator and hence the police are shielding him. A direction is, therefore, sought in this petition to the respondents to initiate action against Gulabrao Karanjule and conduct the investigation of C.R. No.I-399/06 in upright and proper manner. An intervention application is filed in this petition by Gulabrao Karanjule.

4. We have heard at some length Mr. Pradhan,

learned counsel appearing for the petitioner. Mr. Pradhan made a serious grievance that the police have with oblique motive not carried out the investigation properly. The police have deliberately not arrested Gulabrao Karanjule. The learned counsel pointed out that anticipatory bail application of Gulabrao Karanjule was rejected by the Sessions Court. Yet the police have not chosen to arrest him. This fact also be taken note of. He submitted that in the circumstances of the case, therefore, appropriate direction be given to the police.

5. Mr. Gupte, learned Senior Counsel is appearing for the applicant-intervenor Gulabrao Karanjule. We are not inclined to grant intervention application but in the interest of justice, we have given audience to Mr. Gupte on the question of law as regards maintainability of this petition. Mr. Gupte raised preliminary objection that since the charge-sheet is filed on 21/1/07 this court cannot entertain a petition seeking a direction to arrest Gulabrao Karanjule. He submitted that this court cannot monitor the investigation any more. Such a petition according to him is not maintainable. In support of his submission Mr. Gupte placed

reliance on judgments of the Supreme Court in **Union of India & Ors. v. Sushil Kumar Modi & Ors., 1998 III AD (SC) 658** and **M.C. Abraham & Anr. v. State of Maharashtra & Ors., 2003 SCC (Cri) 628** and Mr. Gupte contended that it is only the trial court which is seized of the matter which can, if it finds necessary give appropriate directions now.

6. Mr. Pradhan, learned counsel for the petitioner and Mr. Borulkar, learned Public Prosecutor contended that the judgements cited by Mr. Gupte, have no application to the facts of the present case. They submitted that in any case powers of this court under Article 226 of the Constitution of India are wide enough and in a given case where this court finds that gross injustice has been done and investigating agency has failed to carry out proper investigation, this court can give appropriate directions for further investigation and even for arrest.

7. Mr. Borulkar contended that all allegations level against the investigating agency are incorrect. Mr. Borulkar has drawn our attention to the affidavit filed by one Raju Amarraj Naik, Inspector of Police attached to Ambernath Police

Station, Ambernath. He drew our attention particularly to paragraphs 25 to 29 of the affidavit-in-reply and contended that the investigating agency did try to arrest Gulabrao Karanjule but he was absconding. He drew our attention to an interim order passed by the Division Bench of this court headed by Justice V. G. Palshikar to the following effect;

. "Put up after vacation. Status-quo as of today be maintained till then."

Mr. Borulkar submitted that in view of this order Gulabrao Karanjule could not be arrested. Mr. Borulkar submitted that in the charge-sheet Gulabrao Karanjule is shown as wanted accused. He reiterated what is stated by Shri Naik in his affidavit that Gulabrao Karanjule is a conspirator in the present crime. He submitted that in view of the fact that charge-sheet is filed if the status quo order passed by this court is vacated the police will take appropriate action in accordance with law.

8. In view of the above statement made by Mr. Borulkar and in view of the affidavit filed by Mr.

Naik, Inspector of Police and considering the fact that charge-sheet is filed, we feel that it is not necessary to entertain the present petition.

9. We however, make it clear that, we have not expressed any opinion, on the question of law raised by Mr. Gupte. We have also not examined the aspect of maintainability of intervention application. We are keeping all the contentions raised by the parties open.

10. In the circumstances of the case, we pass the following order:

. "The petition is disposed of in the aforestated terms. In view of the disposal of the petition Criminal Application No. 509 of 2006 does not survive and is disposed of as infructuous.

. We make it clear that all interim orders including order dated 22nd December, 2006 in Criminal Application No. 509 of 2006 granting status quo stand vacated.

. Needless to say that police will be at liberty to proceed as per law.

JUDGE.

JUDGE.